

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-12019-RWZ

GUILLERMO FREDERICO VASCO

v.

FREDERICK B. McALARY, JR.

ORDER
September 23, 2010

ZOBEL, D.J.

Plaintiff, Guillermo Frederico Vasco, brought this diversity action against Frederick B. McAlary, Jr., his former lawyer, apparently for malpractice. The original complaint, although commendably concise, incorporates by reference a lengthy “Memorandum of Law” and an equally lengthy “Confidential Affidavit” together with exhibits which, according to the docket sheet “are too voluminous to scan.” Despite the large amount of material he submitted, plaintiff nowhere sets forth either a viable legal theory or the facts to support it. Indeed, the facts that gave rise to plaintiff’s civil and criminal difficulties and which might inform the claim against defendant, are almost totally obscured. Thus, defendant moved for a more definite statement (Docket # 12), plaintiff countered with a motion to strike defendant’s pleading (Docket # 13). The judge to whom the case was then assigned allowed the first and denied the second. The case was then reassigned to this session.

Plaintiff did, after two extensions, present a new complaint and defendant has

moved again to dismiss it for failure to state a claim upon which relief may be granted, Fed. R. Civ. P. 12(b)(6) (Docket # 50). The new complaint (Docket # 46), does, in three numbered paragraphs, set forth the elements of breach of contract, negligence and unjust enrichment, but nowhere does it contain any facts as to defendant's alleged wrongful conduct. Without some allegations of such misconduct, the complaint lacks a necessary element, namely, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Even construed liberally, this complaint falls short.

The motion to dismiss (Docket # 50) is allowed with prejudice.

September 23, 2010

DATE

/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE